

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE:

Wesley Grove United Methodist Church  
1320 Dorsey Road  
Hanover, MD 21076

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Docket No: TSCA-03-2008-0181

Consent Agreement

**Respondent**

**CONSENT AGREEMENT**

**I. Preliminary Statement**

This Consent Agreement ("CA"), issued under the authority set forth in sections 16 and 207 of TSCA, 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Wesley Grove United Methodist Church ("Respondent"). This CA includes the assessment of a civil penalty against the Respondent, because it is a local education agency liable for violations which occurred at the Wesley Grove Pre-Kindergarten School, located at 1320 Dorsey Road, in Hanover, MD 21076 (the "Facility"), pursuant to the Toxic Substances Control Act ("TSCA"), Subchapter II (the Asbestos Hazard Emergency Response Act or ("AHERA") 15 U.S.C. §§ 2641 to 2656; and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R Part 22, with specific reference to the provisions set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address violations by Respondent of AHERA and the federal regulations

implementing AHERA as set forth at 40 C.F.R. Part 763 Subpart E, and resolve Complainant's civil claims against Respondent arising from the violations of TSCA alleged herein.

## **II. General Provisions**

1. For purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
6. Section 22.13(b) of the Consolidated Rules of Practice provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order.
7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, the Facility is in compliance with the provisions of the Asbestos Hazard Emergency Response Act ("AHERA"), Subchapter II of TSCA, 42 U.S.C. §§ 2641-2656,

and regulations promulgated thereunder.

8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees.
10. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
11. By signing and executing this CA, Respondent certifies that it has already spent two thousand five hundred and fifty five dollars (\$2,555) since MDE's May 23, 2007 inspection for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with § 207(a) of TSCA, 15 U.S.C. § 2647(a), and that Respondent has provided Complainant with all supporting cost documentation and information.
12. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent.

### **III. EPA's Findings of Fact and Conclusions of Law**

13. Complainant has determined that Respondent has violated requirements of TSCA and the federal regulations implementing AHERA set forth at 40 C.F.R. Part 763, Subpart E. In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.

14. Respondent is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83 because it is the owner of a nonpublic, non-profit elementary, or secondary school building, including the Facility, and as such, is responsible for ensuring that the Facility is in compliance with the requirements of AHERA.
15. The Facility is a "school" as that term is defined at Section 202(12) of TSCA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.
16. The Facility is a "school building" as that term is defined at Section 202(13) of TSCA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

#### COUNT I

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.
18. 40 C.F.R. § 763.85(b)(1) requires that at least once every 3 years after a management plan is in effect, each Local Education Agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.
19. On May 23, 2007, MDE's duly authorized inspector conducted an inspection at the Facility.
20. During the inspection, MDE's inspector discovered that the LEA had failed to conduct 3 year reinspections of the school building since October 2000 as required by the regulations.

21. By failing to conduct 3 year reinspections, the Respondent violated the requirements of 40 C.F.R. § 763.85(b)(1) at the school building.

#### COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.

23. 40 C.F.R. § 763.93(g)(4) states, in pertinent part, that: "...at least once each school year, the [LEA] shall notify in writing parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification."

24. During the May 23, 2007 inspection, the MDE inspector found that the Respondent failed to provide, at least once each school year, written notification of the availability of the Facility's management plan, to parent, teacher, and employee organizations and to include in the management plan a description of the steps taken to notify each such organization, and a dated copy of each such notification.

25. By failing to provide the annual written notification, the Respondent violated 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

#### **IV. Settlement Recitation**

26. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), for Respondent's TSCA violations. In full settlement of the violations alleged in this Consent Agreement, in consideration of each provision of this Consent Agreement and the accompanying Final Order, and pursuant to Sections 207(a) and (c) of TSCA,

15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of five thousand five hundred (\$ 5,500) dollars is appropriate.

27. The aforesaid assessed penalty is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 207(c) of TSCA, 15 U.S.C. § 2647(c), *i.e.*, the significance of the violation, the culpability of the violator, and the ability of the violator to continue to provide educational services to the community. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act ("ERP")*, dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.
28. Respondent certifies that it has spent two thousand five hundred and fifty five (\$2,555) dollars since MDE's May 23, 2007 inspection to comply with Subchapter II of TSCA. Therefore, pursuant to sections 16(a)(2)(C) and 207(a) of TSCA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of two thousand five hundred and fifty five (\$2,555) dollars of the civil penalty assessed against the Respondent.
29. Respondent consents to the assessment of a five thousand five hundred (\$5,500) dollar civil penalty with a cash component of two thousand nine hundred and forty five (\$2,945) dollars.
30. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by cashier's or certified check, electronic wire

transfer, Automated Clearinghouse, or online. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000. (Fedex and other non-U.S. Postal Service express mail deliveries shall be sent to U.S. Bank, 1005 Convention Plaza, Mail Station SL-MO-C2GL, St. Louis, MO 63101). All payments made by check shall reference the above case caption and docket number, TSCA-03-2008-0181. Questions regarding payments made by check should be directed to Natalie Pearson at 314-418-4087. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 021030004, Account 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045 (Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"). All Automated Clearinghouse or REX payments shall be directed to PNC Bank, 808 17<sup>th</sup> Street NW, Washington DC 20074, ABA No. 051036706, Transaction Code 22 – checking, Environmental Protection Agency, Account No. 310006, CTX Format. Questions regarding payments made through the Automated Clearinghouse should be directed to Jesse White at 301-887-6548. The online payment option can be accessed at [WWW.PAY.GOV](http://WWW.PAY.GOV) and by entering "sfo 1.1" in the search field. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, Automated Clearinghouse, or online payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Carolyn

Bernota, Case Development Officer (3WC32), Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent



per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### **V. Reservation of Rights**

32. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under Subchapter II of TSCA, 15 U.S.C. §§ 2641 to 2656, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

#### **VI. Effective Date**

33. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
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Docket No: TSCA-03-2008-0181  
**Final Order**

**Respondent**

**FINAL ORDER**

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, Respondent is assessed a civil penalty of five thousand and five hundred (\$5,500) dollars, but that the cash component of that civil penalty will be two thousand nine hundred and forty five (\$2,945) dollars.

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), two thousand five hundred and fifty five (\$2,555) dollars of the civil penalty assessed against the Respondent is hereby remitted.

The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

6/9/08  
Date

Renee Sarajian  
Renee Sarajian

Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III



**VII. Execution**

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

**Respondent:**

May 23, 2008  
Date

Susan Russo  
Ms. Susan Russo, Chief Executive

**For Complainant:**

5/28/2008  
Date

Carolyn Bernota  
Carolyn Bernota, Enforcement Officer

Accordingly I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

6/6/2008  
Date

Abraham Ferdas for AF  
Abraham Ferdas, Director  
Waste and Chemicals Management Division